

## SECTION 15

### Digests

A claim cannot be withdrawn in exchange for a sum of money, since Section 15(b) explicitly provides that an agreement by an employee to waive his right to compensation is invalid. The Board followed Graham, 9 BRBS 1551 (1978), and Gutierrez, 18 BRBS 62 (1986), holding that an approved settlement was not achieved where claimant sought to terminate his compensation claim for a sum of money, but failed to follow the Section 8(i) settlement procedures which include obtaining approval of the deputy commissioner which was refused in this case. O'Berry v. Jacksonville Shipyards, Inc., 21 BRBS 355 (1988), aff'd in part, part on recon., 22 BRBS 430 (1989).

The Fifth Circuit states that a claimant's agreement to accept compensation pursuant to a submitted but unapproved settlement is invalid under Section 15(b) because it is an agreement to waive compensation. See *Oceanic Butler Inc. v. Nordahl*, 842 F.2d 773, 21 BRBS 33 (CRT) (5th Cir. 1988), *aff'd* 20 BRBS 18 (1987).

A claimant must follow the settlement procedures of Section 8(i) if he wishes to withdraw his claim for a sum of money. The deputy commissioner is authorized to approve a request for a withdrawal of a claim if the request is for a proper purpose and is in claimant's best interest. See 20 C.F.R. §702.225. The letter from the deputy commissioner "approving the withdrawal" in this case was not an effective withdrawal in that it did not contain a determination as to whether the withdrawal was for a proper purpose and in claimant's best interests. Because the payment or promise of payment for a sum of money was involved in the purported withdrawal in this case, the Board held that the withdrawal was ineffective. *Norton v. National Steel & Shipbuilding Co.*, 25 BRBS 79 (1991), *aff'd on recon. en banc*, 27 BRBS 33 (1993)(Brown, J. dissenting).

The Board held that the settlement agreement as a whole clearly indicated that the settlement was reached solely on the hearing loss in existence at the time of the settlement. The Board rejected the Director's contention that the language of the settlement was overbroad, noting that claimant has not worked for employer since 1959, that no claim can be filed against employer in the absence of additional injurious exposure, and that a claim for death benefits due to hearing loss is unlikely. Construing the language of the agreement as only applying to the hearing loss claim for which benefits were sought and as being in compliance with the settlement procedures of Section 8(i), the Board rejected the Director's contention that the settlement violated Section 15(b). Kelly v. Ingalls Shipbuilding, Inc., 27 BRBS 117 (1993).

A claimant may not be withdrawn for a sum of money, absent compliance with Section 8(i), as this would violate Section 15(b). In this case there was neither a valid settlement nor valid withdrawal of the claim, and the case is remanded for a determination on the merits. *Henson v. Arcwel Corp.*, 27 BRBS 212 (1993).

The Fifth Circuit rejected the claimant's breach of contract claim where the contract in question provided that if claimant suffered a compensable injury POI would pay Brown 100 percent of his salary and reasonable medical benefits in lieu of the compensation benefits applicable in the jurisdiction where he was injured. In exchange, claimant waived any claims that he may have against POI arising out of his injury. The court found that the contract was void pursuant to Section 15(b) of the Act because it waived claimant's right to compensation under the Act. Although claimant argued that the contract was enforceable because of POI's failure to secure compensation, the court held that this was an issue which was separate and distinct from the validity of the contract and that Section 32 of the Act provided a mechanism for punishing employers who failed to secure compensation. The court also rejected claimant's assertion that he was induced into entering an agreement which was void by fraud and misrepresentation. *Brown v. Forest Oil Corp.*, 29 F.3d 966, 28 BRBS 78 (CRT)(5th Cir. 1994).

The Board permits the Director to raise for the first time on appeal the issues of the proper compensation rate and whether a notice of controversion was timely filed even though claimant and employer stipulated to these issues. The stipulations, if not in accordance with law, potentially violate Section 15(b) because they constitute an agreement under which claimant is effectively waiving his right to compensation by accepting less than that to which he is entitled. *Puccetti v. Ceres Gulf*, 24 BRBS 25 (1990).